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FILED

OCT 28 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA

18 REGINALD OLIVER, individually and on
19 behalf of those persons similarly situated,

20 Plaintiffs,

21 vs.

22 CITY OF OAKLAND; KARLA RUSH OR
23 DOE 1, individually and in her capacity as a
24 police officer for the City of Oakland; DOES
2-100, inclusive,

Defendants.

CASE NO.

C08-04914

COMPLAINT FOR DAMAGES,
DECLARATORY AND INJUNCTIVE
RELIEF

(Violation of Civil Rights,
42 U.S.C. Section 1983)

CIVIL RIGHTS CLASS ACTION

JURY TRIAL DEMANDED

COMPLAINT FOR DAMAGES

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JURISDICTION

1. This action arises under 42 U.S.C. Sections 1983. Jurisdiction is based on 28 U.S.C. Sections 1331 and 1343.

INTRADISTRICT ASSIGNMENT

2. The claims alleged herein arose in the City of Oakland, State of California. Therefore, venue and assignment lies in the United States District Court for the Northern District of California, San Francisco or Oakland Divisions. 28 U.S.C. Section 1391(b)(2).

PARTIES

3. Plaintiff, REGINALD OLIVER, is an African American male.

4. Defendant CITY OF OAKLAND is, and at all times herein mentioned was, a municipal corporation duly organized and existing under the laws of the State of California.

5. Defendant KARLA RUSH (hereinafter Defendant RUSH) or DOE 1 was at all times herein mentioned, a Police Officer for Defendant CITY OF OAKLAND and is sued herein in her individual and official capacities.

6. Plaintiff is ignorant of the true names and/or capacities of defendants sued herein as DOES 1 through 100, inclusive, and therefore sues said defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believe, and upon such information and belief allege that each of the Doe defendants is legally responsible and liable for the incident, injuries and damages hereinafter set forth, and that each of said defendants proximately caused said incidents, injuries and damages by reason of their negligence, breach of duty, negligent supervision, management or control, battery, violation of constitutional rights, violation of public policy, false

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1 arrests, or by reason of other personal, vicarious or imputed negligence, fault, or breach of duty,
2 whether severally or jointly, or whether based upon agency, employment, ownership,
3 entrustment, custody, care or control or upon any other act or omission. Plaintiff will ask leave
4 to amend this complaint to insert further charging allegations when such facts are ascertained.

5 7. In doing the acts alleged herein, defendants, and each of them, acted
6 within the course and scope of their employment for the CITY OF OAKLAND.

7 8. In doing the acts and/or omissions alleged herein, defendants, and each of
8 them, acted under color of authority and/or under color of law.

9 9. In doing the acts and/or omissions alleged herein, defendants, and each of
10 them, acted as the agent, servant, employee and/or in concert with each of said other defendants
11 herein.

12 STATEMENT OF FACTS

13 10. Defendant CITY OF OAKLAND and high ranking CITY OF OAKLAND
14 officials have long been on actual notice that members of the CITY OF OAKLAND Police
15 Department, particularly those assigned to narcotics and gang units, have repeatedly violated the
16 constitutional rights of citizens by fabricating information in reports, providing false and/or
17 intentionally misleading information in warrant affidavits to the Court and have otherwise caused
18 numerous citizens to be subjected to searches, arrests, imprisonment and malicious prosecutions
19 without probable cause.

20 11. Despite the fact that the City of Oakland agreed to a non-monetary
21 settlement agreement in the case of *Delphine Allen, et al. v. City of Oakland*, USDC No. C-00-
22 4599 TEH, otherwise known as "The Riders" litigation, which was intended to redress and
23 prevent a recurrence of a pattern and practice of such abuses and constitutional violations by

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1 drug and gang officers in the Oakland Police Department, the CITY OF OAKLAND has
2 repeatedly failed fully implement and enforce said settlement agreement, and worse, it now
3 appears that numerous members of the defendant CITY OF OAKLAND's Police Department
4 have continued to engage in customs, policies, patterns and practices of fabricating information
5 in reports, providing false and/or intentionally misleading information in warrant affidavits to the
6 Court and have otherwise continued to cause numerous citizens to be subjected to searches,
7 arrests, imprisonments and malicious prosecutions without probable cause.

8 12. In particular, plaintiff is informed and believes and thereon alleges that
9 members of the CITY OF OAKLAND Police Department, including, but not limited to,
10 defendant KARLA RUSH or DOE 1 and/or DOES 2-50 and/or each of them, have individually
11 and/or while acting in concert with one another, engaged in a repeated pattern and practice of
12 providing false or misleading information in police reports, warrant affidavits, testimony and/or
13 in other writings and/or verbal statements in order to cause the false arrest, false imprisonment
14 and/or malicious prosecution of numerous individuals, including, but not limited to, the plaintiff,
REGINALD OLIVER and class members described below.

15 13. Plaintiff is further informed and believes and thereon alleges that said
16 customs, policies, patterns and/or practices are the product of a culture of tolerance in the CITY
17 OF OAKLAND Police Department in which the end result, i.e., an arrest and/or prosecution, by
18 any means necessary (whether lawful or unlawful) has become more important than ensuring
19 that the Constitution and legal processes are followed by members of the Oakland Police
20 Department.

21 14. Plaintiff is further informed and believes and thereon alleges that as a
22 matter of official policy -- rooted in an entrenched posture of deliberate indifference to the

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1 constitutional rights of primarily the minority citizens who live, visit and/or travel within
2 Oakland neighborhoods in particular -- defendant CITY OF OAKLAND has long allowed
3 citizens, such as the plaintiff and the class members herein, to be abused by its police officers,
4 including by defendant KARLA RUSH or DOE 1 and/or DOES 2-50 and/or by each of them,
5 individually and/or while acting in concert with one another.

6 15. As a result of the pre-existing customs, policies, patterns and/or practices
7 of such abuses by members of defendant CITY OF OAKLAND's Police Department, plaintiff,
8 REGINALD OLIVER and the class members described in this Complaint, were subjected to the
9 violation of their constitutional rights as alleged herein.

10 16. Specifically with respect to plaintiff REGINALD OLIVER, plaintiff is
11 informed and believes and thereon alleges that defendant KARLA RUSH or DOE 1 and/or
12 DOES 2-50 and/or each of them, individually and/or while acting in concert with one another as
13 members of the CITY OF OAKLAND Police Department, caused a warrant to be issued by the
14 Alameda Superior Court without probable cause, based on intentionally false and/or misleading
15 statements made in bad faith by defendant RUSH or DOE 1 and/or DOES 2-50 and/or each of
16 them.

17 17. Thereafter, plaintiff OLIVER was subjected to an unreasonable search and
18 seizure on or about March 8, 2008, when members of the CITY OF OAKLAND Police
19 Department used said warrant to enter a residence located at or about 619 Douglas Avenue in
20 Oakland, California, where the plaintiff was located.

21 18. As a result of said unreasonable search and seizure, the plaintiff was
22 arrested without reasonable or probable cause. The plaintiff was thereafter imprisoned in jail
23 without reasonable or probable cause until he was able to post bail. The plaintiff was thereafter

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1 maliciously prosecuted on criminal charges in Alameda Superior Court as a direct result of the
2 illegally obtained warrant.

3 19. Eventually, on or about October 6, 2008, plaintiff is informed and believes
4 and thereon alleges that the malicious charges were dismissed after the Alameda County District
5 Attorney's Office discovered that the warrant was obtained illegally by defendant KARLA
6 RUSH or DOE 1 and/or by DOES 2-50, individually and/or while acting in concert with one
7 another.

8 20. Plaintiff is further informed and believes and thereon alleges that plaintiff,
9 and all persons similarly situated, suffered the violation of their constitutional rights as a result of
10 customs, policies, patterns and/or practices of Defendant CITY OF OAKLAND, DOES 51-100,
11 and each of them, including, but not limited to, deliberate indifference in the hiring, supervision,
12 training, and discipline of members of the Oakland Police Department, including, but not limited
13 to, defendant KARLA RUSH or DOE 1 and/or DOES 2-50 and/or each of them.

14 21. Plaintiff is further informed and believes and thereon alleges that he, and
15 all persons similarly situated to him, suffered the violation of their constitutional rights as alleged
16 herein as a result of customs, policies and/or practices of defendants CITY OF OAKLAND,
17 DOES 51-100, and/or each of them, including customs, policies and/or practices of failing to
18 fully and/or fairly investigate complaints of misconduct against its police officers; of failing to
19 appropriately monitor or otherwise track complaints of misconduct against its police officers so
20 that appropriate and timely disciplinary action and/or training could be taken when officer(s)
21 were shown to have a history of complaints; and/or of failing to promptly remove or terminate
22 officers who repeatedly violated the rights of citizens and/or engaged in the type of misconduct
23 alleged herein.

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1 22. Plaintiff is informed and believes and thereon alleges that the
2 aforementioned incidents were caused by the deliberate indifference of the CITY OF
3 OAKLAND, Defendants 51-100, and/or other high ranking Police Department officials and/or
4 supervisors, with regard to the need for more or different training and/or supervision and/or
5 discipline of its police officers, including, but not limited to, defendants KARLA RUSH or DOE
6 1 and/or DOES 2-50 and/or each of them.

7 23. Plaintiff is further informed and believes and thereon alleges that he, and
8 all persons similarly situated, suffered the violation of their constitutional rights as a result of
9 customs, policies, or practices of defendants CITY OF OAKLAND, DOES 51-100, and/or each
10 of them, individually and/or acting in concert with one another, including, but not limited to,
11 customs, policies or practices which encouraged, authorized or condoned false arrests,
12 fabrication of evidence, falsification of police reports, false and/or misleading warrant affidavits
13 and/or other misconduct which foreseeably would result in the violation of the rights of citizens.

14 24. Plaintiff is further informed and believes and thereon alleges that he, and
15 all persons similarly situated, suffered the violation of their constitutional rights as a result of
16 customs, policies or practices of defendants CITY OF OAKLAND, DOES 51-100, individually
17 and/or acting in concert with one another, including, but not limited to, a custom, policy or
18 practice of failing to stop or prevent ongoing acts of misconduct by certain members of its police
19 department, including, but not limited to, defendant KARLA RUSH or DOE 1, DOES 2-50
20 and/or each of them.

21 25. Plaintiff is further informed and believes and thereon alleges that he, and
22 all persons similarly situated, suffered the violation of their constitutional rights as a result of
23 customs, policies or practices of defendants CITY OF OAKLAND, DOES 51-100, individually
24

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1 and/or acting in concert with one another, including, but not limited to, a custom, policy or
2 practice of failing to uphold and enforce remedies that defendants already agreed to adopt to
3 prevent such ongoing abuses by members of the CITY OF OAKLAND Police Department in the
4 *Delphine Allen v. City of Oakland (The Riders) Litigation*.

5 26. Plaintiff is further informed and believes and thereon alleges that high
6 ranking CITY OF OAKLAND officials, including, but not limited to defendants DOES 51-100,
7 and/or other high ranking police department officials and/or supervisors, knew and/or reasonably
8 should have known of the custom, policies, patterns and/or practices of misconduct by the
9 individual police officer Defendants herein, KARLA RUSH or DOE 1 and/or DOES 2-100
10 and/or by each of them, and failed to take any or appropriate remedial action prior to the subject
11 incident.

12 27. Plaintiff is further informed and believes and thereon alleges that
13 defendants DOES 51-100, and/or each of them, tacitly or directly ratified, approved, condoned
14 and/or otherwise encouraged a pattern, practice, custom or policy of misconduct and/or civil
15 rights violations by defendant KARLA RUSH or DOE 1 and/or DOES 2-50 and/or each of them.

16 CLASS ACTION ALLEGATIONS

17 28. Plaintiff seeks class certification pursuant to Fed.R.Civ.P. 23(a) and (b)(2)
18 to allege claims for damages, injunctive and declaratory relief on behalf of himself and all
19 persons similarly situated. The proposed class consists of all persons who were subjected to
20 searches, seizures, arrests, imprisonments and/or malicious prosecutions based on false and/or
21 misleading information contained in CITY OF OAKLAND police reports, warrant affidavits
22 and/or other testimony and/or writings used to obtain search and/or arrest warrants from

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1 California Courts by members of the CITY OF OAKLAND Police Department since the
2 adoption of the non-monetary settlement agreement in *Delphine Allen v. City of Oakland*.

3 29. This case satisfies the prerequisites of a Rule 23(b)(2) class action.

4 30. The class is so numerous that joinder of all members is impracticable.
5 Plaintiff does not know the identities or exact number of all class members. Based on newspaper
6 accounts, it appears that at least 12 members of the City of Oakland Police Department were
7 pulled from street duty by the Oakland Police Department in connection with this latest scandal
8 and the Alameda County District Attorney's Office has not yet determined the exact number of
9 cases it intends to move to dismiss as a result of the false and/or misleading information given by
10 Oakland Police Department officers to the Court in procuring warrants. Therefore, the size of
11 the class is likely to be large given the number of officers involved.

12 31. There are questions of law and fact common to all members of the class,
13 because all class members have been adversely affected by the challenged actions of the
14 defendants. Common questions of law and fact include, but are not limited to: whether defendant
15 KARLA RUSH or DOE 1 and/or DOES 2-50 and/or each of them engaged in a custom, policy,
16 pattern and/or practice of fabricating police reports, making false and/or misleading statements in
17 procuring warrants from the Courts and/or otherwise causing the plaintiff and class members to
18 be subjected to unreasonable searches and seizures, false arrests, false imprisonments and/or
19 malicious prosecutions; whether the defendants' conduct was motivated by racial animus or bias,
20 whether defendant CITY OF OAKLAND maintained customs, policies, patterns and practices
21 which caused and/or contributed to the violation of the plaintiffs' rights; and whether the CITY
22 OF OAKLAND, its police department and/or city officials and/or supervisors failed to properly

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1 train and supervise members of the CITY OF OAKLAND Police Department which caused
2 and/or contributed to the violation of the plaintiffs' rights.

3 32. The claims of the named plaintiff are typical of the claims of the class.
4 The claims of the class members arise from the same type of conduct, customs, policies or
5 practices that have resulted in damages to the class representatives and are based on the same
6 legal theories.

7 33. The representative plaintiff will fairly and adequately protect the interests
8 of the class because he is, and was, subject to the policies, customs, patterns and practices
9 complained of herein, and has no interests antagonistic to other members of the class. In
10 addition, plaintiff's counsel are experienced in litigating federal civil rights cases and class
11 actions, including federal civil rights actions against the CITY OF OAKLAND and the CITY OF
12 OAKLAND Police Department.

13 34. The defendants have acted and/or have failed to act on grounds generally
14 applicable to the class, and an award of damages, injunctive and declaratory relief for the class as
15 a whole is appropriate.

16 35. The prosecution of separate actions by individual members of the class
17 would create a risk of inconsistent or incompatible standards of conduct for the defendants,
18 thereby making a class action the superior method of adjudicating the controversy.

19 **STATEMENT OF DAMAGES AND RELIEF SOUGHT**

20 36. As a result of the acts and/or omissions of defendants as alleged in this
21 Complaint, plaintiff, and those persons similarly situated, and each of them, suffered damages
22 and/or injuries, including, but not limited to, pain, suffering and emotional distress, in amounts to
23 be determined according to proof.

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1 37. As a result of the acts and/or omissions of defendants as alleged in this
2 Complaint, plaintiff, and those persons similarly situated, and each of them, suffered special
3 damages or may suffer special damages in the future, including, but not limited to, lost wages,
4 criminal defense attorneys' fees and costs, bail bond expenses and/or other out of pocket losses
5 to be determined according to proof.

6 38. Plaintiff and the class members will also be entitled to recover their
7 reasonable attorneys' fees and costs in addition to their general and compensatory damages
8 pursuant to statute.

9 39. The conduct of defendant KARLA RUSH or DOE 1 and/or DOES 2-100
10 and/or each of them, was intentional, oppressive, malicious, fraudulent and/or done with a
11 conscious and/or reckless disregard for the rights of the plaintiffs. Therefore, plaintiff and the
12 class members will be entitled to recover punitive damages in amounts to be determined
13 according to proof.

14 40. Defendants' policies, practices, customs, conduct and acts alleged herein
15 have resulted and will continue to result in irreparable injury to plaintiff and the class members,
16 including but not limited to violations of their constitutional and statutory rights. Plaintiff and
17 class members have no plain, adequate or complete remedy at law to address the wrongs
18 described herein. The plaintiff and class members intend in the future to exercise their
19 constitutional rights in the vicinity of the City of Oakland and in other public places in the City
20 of Oakland. Defendants' conduct described herein has created fear, anxiety and uncertainty
21 among plaintiffs with respect to their ability to exercise their constitutional rights in the present
22 and future, and with respect to their liberty, privacy, physical security and safety. Defendants'
23 conduct described herein has also created fear, anxiety and uncertainty among plaintiffs and class

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1 members with respect to their exercise of their right to move freely about the public streets, in
2 their own homes and/or in the homes of friends and/or relatives without being subjected to
3 unreasonable searches and seizures and/or discriminatory and disparate treatment due to their
4 ethnicity and/or race.

5 41. Plaintiff and the class therefore seek injunctive relief from this court, to
6 ensure that plaintiff and persons similarly situated will not suffer violations of their rights from
7 defendants' illegal and unconstitutional policies, customs and practices as described herein.

8 42. An actual controversy exists between plaintiff, the class members and
9 defendants in that plaintiff and the class contends that the policies, practices and conduct of
10 defendants alleged herein are unlawful and unconstitutional, whereas plaintiff and the class
11 members are informed and believe that defendants contend that said policies, practices and
12 conduct are lawful and constitutional. Plaintiff seeks a declaration of rights with respect to this
13 controversy.

14 **CLAIMS FOR RELIEF**

15 **FIRST CLAIM FOR RELIEF**

16 **(42 U.S.C. SECTION 1983)**

17 **(AGAINST DEFENDANTS KARLA RUSH, DOES 1-50)**

18 43. Plaintiff incorporates by reference and re-alleges herein Paragraphs 1
19 through 42.

20 44. In doing the acts complained of herein, defendants KARLA RUSH or
21 DOE 1 and/or DOES 2-50 and/or each of them, did act under color of state law to deprive
22 plaintiff, the class members and/or each of them as alleged heretofore of certain constitutionally
23 protected rights, including, but not limited to:

24 **COMPLAINT FOR DAMAGES**

- (a) the right to be free from unreasonable searches or seizures;
- (b) the right to equal protection of the law; and/or
- (c) the right not to be deprived of liberty without due process of law.

45. Said rights are substantive guarantees under the Fourth and/or Fourteenth Amendments to the United States Constitution.

46. As a result of the violation of their constitutional rights by defendants KARLA RUSH or DOE 1 and/or DOES 2-50 and/or each of them, plaintiffs, the class members and/or each of them sustained the injuries and/or damages as alleged heretofore in this Complaint.

WHEREFORE, Plaintiff and the class members pray for relief as hereinafter set forth.

SECOND CLAIM FOR RELIEF

(42 U.S.C. SECTION 1983)

(AGAINST DEFENDANTS CITY OF OAKLAND, DOES 51-100)

47. Plaintiff incorporates by reference and re-alleges herein Paragraphs 1 through 46.

48. As against Defendants CITY OF OAKLAND and/or DOES 51-100 and/or each of them, individually and/or in their capacities as official policy-maker(s) for the CITY OF OAKLAND, the plaintiff and class members further allege that the acts and/or omissions alleged in the Complaint herein are indicative and representative of a repeated course of conduct by members of defendant CITY OF OAKLAND Police Department tantamount to a custom, policy or repeated practice of condoning and tacitly encouraging the abuse of police authority, and disregard for the constitutional rights of citizens, such as plaintiffs.

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1 49. Plaintiff and class members are further informed and believe and thereon
2 allege that the acts and/or omissions alleged herein are the proximate result of a custom, policy,
3 pattern or practice of deliberate indifference by defendant CITY OF OAKLAND, DOES 51-100
4 and/or each of them, to the repeated violations of the constitutional rights of citizens by CITY
5 OF OAKLAND police officers, which have included, but are not limited to, repeated acts of
6 making false reports, providing false and/or misleading information in the procurement of
7 warrants, causing arrests, imprisonments and/or malicious prosecutions based on fabricated
8 and/or misleading statements and/or engaging in similar acts of misconduct on a repeated basis.

9 50. Plaintiff and class members are further informed and believe and thereon
10 allege that the damages sustained as alleged herein were the proximate result customs, policies
11 and/or practices which included, but were not limited to, the failure to adequately or
12 appropriately hold officers accountable for their misconduct, the failure to properly and fairly
13 investigate complaints about officers' misconduct, the failure to enact or adopt policies to ensure
14 adequate and/or appropriate oversight of officers to prevent continuing violations of the rights of
15 citizens, the failure to fully implement and enforce the non-monetary settlement agreement in the
16 *Delphine Allen v. City of Oakland (the Riders) Litigation* which was intended to redress the same
17 or similar unconstitutional conduct that occurred in the instant case, the failure to properly train
18 and/or discipline officers, the failure to adequately or properly supervise officers, the failure to
19 adopt and fully implement an appropriate early warning system, policies and customs which
20 encouraged officers to target certain groups of citizens for unreasonable search and seizure
21 and/or other customs, and/or policies which caused and/or contributed to, the violation of the
22 rights of citizens by members of the CITY OF OAKLAND Police Department.

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1 51. The aforementioned deliberate indifference, customs, policies or practices
2 of defendants CITY OF OAKLAND, DOES 51-100, and/or each of them, resulted in the
3 deprivation of the constitutional rights of the plaintiff and class members, including, but not
4 limited to, the following:

5 (a) the right not to be deprived of liberty or property without Due Process of Law;

6 (b) the right to be free from unreasonable searches and/or seizures; and/or,

7 (c) the right to equal protection of the law.

8 52. Said rights are substantive guarantees under the Fourth and/or Fourteenth
9 Amendments to the United States Constitution.

10 53. As a result of the violation of their constitutional rights by defendants
11 CITY OF OAKLAND and/or DOES 51-100 and/or each of them, plaintiffs and the class
12 members and/or each of them, sustained the injuries and/or damages as alleged heretofore in this
13 Complaint.

14 WHEREFORE, plaintiff and class members pray for relief as hereinafter set forth.

15 **JURY TRIAL DEMAND**

16 54. Plaintiff and class members hereby demand a jury trial.

17 **PRAYER**

18 WHEREFORE, Plaintiff and class members pray for judgment against defendants, and
19 each of them, as follows:

20 1. For an order certifying the class defined herein pursuant to Fed.R.Civ.P. 23(a) and
21 (b)(2);

22 2. For preliminary and permanent injunctive relief restraining defendants from engaging
23 in the unlawful and unconstitutional actions complained of above;

24 **COMPLAINT FOR DAMAGES**

1 3. For a declaratory judgment that defendants' conduct complained of herein was a
2 violation of plaintiffs' rights under the Constitution and laws of the United States and California;

3 4. For the individual named plaintiffs, general and compensatory damages to be
4 determined according to proof;

5 5. For punitive and exemplary damages in amounts to be determined according to proof
6 as to the individual defendants;

7 6. For attorneys' fees pursuant to 42 U.S.C. § 1988 and/or other authorities in amounts to
8 be determined according to proof;

9 7. For costs of suit;

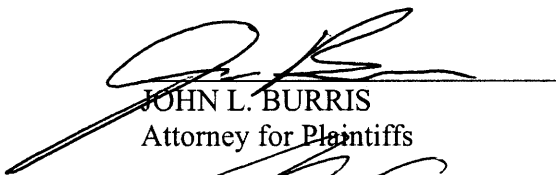
10 8. For pre- and post-judgment interest as permitted by law;

11 9. For such other and further relief as the Court may deem just and proper.

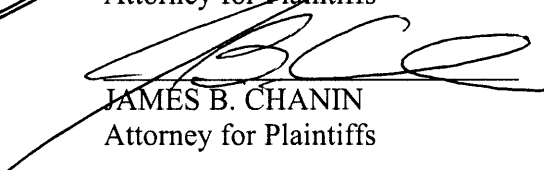
12 **CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

13 Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the
14 named parties, there is no such interest to report.

15 Dated: October 29, 2008


JOHN L. BURRIS
Attorney for Plaintiffs

17 Dated: October 27, 2008


JAMES B. CHANIN
Attorney for Plaintiffs

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